

APPEAL NO. 022605
FILED NOVEMBER 27, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on July 15, 2002. With respect to the issues before him, the hearing officer determined that respondent 1 (claimant) sustained a compensable occupational disease injury and had disability from January 24, 2002, through July 15, 2002. A Texas Workers' Compensation Commission (Commission) Order for Attorney's Fees (Order) was issued on September 18, 2002, approving 12.50 hours out of the 27.50 hours requested by the appellant (attorney) for respondent 2 (carrier) for a total approved fee of \$1,562.50 out of the \$3,437.50 requested. The attorney appeals, urging that all 27.50 hours submitted in the Application for Attorney's Fees (TWCC-152) were "clearly reasonable, necessary, and relative to the issue at hand" in the representation of the carrier. The file contains no response from the claimant or the carrier.

DECISION

Reversed and rendered.

We review a hearing officer's determination of attorney's fee under an abuse-of-discretion standard. Texas Workers' Compensation Commission Appeal No. 970248, decided March 31, 1997. In this case, the attorney submitted justification text for six of the eighteen entries that were ultimately not approved by the hearing officer. The twelve entries that did not include a written justification were requested under the section "Communications." The attorney requested a total of 6.0 hours and the hearing officer approved 3.0 of the requested hours and indicated that he did not approve the additional 3.0 hours for the reason "Time/Cost Unreasonable." The Attorney Fee Processing System (AFPS) indicates that no log text was filed by the hearing officer explaining why he believed the requested fees to be "Time/Cost Unreasonable." Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 152.4(c) (Rule 152.4(c)) provides for a maximum of 2.50 hours per month for communications and the attorney requested fees representing 2.0 hours per month for the months of May, June and July. Accordingly, we find that hearing officer abused his discretion in approving only 3.0 hours of the 6.0 requested hours as the hours requested did not exceed those allowed by Rule 152.4(c).

The already mentioned above Rule 152.4 provides that an attorney may request and the Commission may approve a greater number of hours than allowed by the guidelines if the attorney demonstrates to the Commission that the higher fee request is justified. With regard to the six entries representing 12.0 of the 20.0 total hours requested by the attorney under the section, "Formal Resolution: Contested Case Hearing," the hearing officer indicated that the hours requested "[Exceeds] Guideline/Unreasonabl[e]." The AFPS indicates that the attorney provided written justification for each of the six entries explaining why it was necessary to exceed the number of hours allowed in Rule 152.4(c). The AFPS indicates that the hearing officer

did not enter a log text indicating his reasons, in view of the justification text for not allowing time in excess of the guidelines. Without any indication that the hearing officer was applying any guiding principles in denying these fees, we find that he abused his discretion. We, therefore, reverse the denial of the 12.0 hours and render a decision that the attorney was entitled to these fees based upon the justification text.

For the aforementioned reasons, we reverse the denial of attorney's fees representing 15.0 hours and render a decision that the attorney is entitled to payment for the an additional 15.0 requested hours for a total approved fee of \$3,437.50.

The true corporate name of the insurance carrier is **HARTFORD UNDERWRITERS INSURANCE** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Veronica Lopez
Appeals Judge